THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (S/B) No. 208 of 2005

Rajesh Kumar S/O Sri Milkhi Ram,
At present working as Assistant Engineer,
Construction Division (Electric/Mechanic), Uttaranchal Pey-Jal Sansadhan Vikash Evam Nirman Nigam, Kotdwar, District Pauri Garhwal.

… **Petitioner.**

Versus

1. State of Uttaranchal through Secretary Pay-Jal, Uttaranchal Shasan, Dehradun.
2. Managing Director, Uttaranchal Pay-Jal Sansadhan, Vikash Evem Nirman Nigam, 11- Mohini Road, Dehradun.
3. Chief Engineer (Head Quarter) Uttaranchal, Pay-Jal Sansadhan Vikash Evem Nirman Nigam, 11-Mohini Road, Dehradun.
4. Supretending Engineer (Electri/Mechanic Circle) Uttaranchal Pay-Jal Sansadhan Vikash Evem Nirman Nigam, 16-Laxmi Road, Dehradun.
5. Executive Engineer, Construction Division, (Electric And Mechanic), Uttaranchal Pay-Jal Sansadhan Vikash Evem Nirman Nigam, Kotdwar District- Pauri.

… **Respondents.**

Sri M.C. Kandpal, Senior Advocate assisted by SriS.S.Chaudhary, Adv., learned counsel for the petitioner.
Sri K.P.Upadhyay, Learned Standing for the State of Uttaranchal.
Sri D.S.Patni, learned counsel for the contesting respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Dated July 04, 2006.

Heard Sri M.C. Kandpal, learned Senior Advocate assisted by Sri S.S. Chaudhary, appearing on behalf of the petitioner and Sri D.S. Patni, learned counsel for the contesting respondents as well as learned Standing Counsel for the respondent no.1 –State of Uttaranchal.

This writ petition has been filed by the petitioner for a direction in the nature of certiorari to quash the impugned order

dated 29-8-2005, passed by respondent no.3 by which the petitioner has been reverted from the post of Assistant Engineer to the post of Junior Engineer.

The petitioner was promoted under the reserve quota for Scheduled Tribes under the U.P. Jal Nigam Engineering Services Rules, 1978. The order dated 24-10-1998 does not indicate that it was an ad-hoc promotion. From a perusal of the order dated 24-10-1998 itself, it is clear that it was a regular promotion against a reserved post.

After the enforcement of Hill Sub Cadre Rules of the U.P. Jal Nigam, the petitioner opted for Uttaranchal and he became a member of the Hill Sub Cadre Rules of the U.P. Jal Nigam. Hill Sub Cadre Rules came into force from the year 1992 and the petitioner was promoted in the year 1998 prior to the enforcement of the Hill Sub Cadre Rules in the State of Uttaranchal.

A perusal of the impugned order clearly indicates that the petitioner was reverted to the post of Junior Engineer on the ground that there is no reserved post for promotion for Scheduled Tribe Candidates available under the Hill Sub Cadre Rules in the Uttaranchal Pey Jal Sansadhan Vikash Evam Nirman Nigam after the appointed date in the Electrical and Mechanical Cadre. This order has been passed by the Chief Engineer (Headquarter). The Chief Engineer (Headquarter) failed to apply his mind to the fact that the petitioner had been appointed prior to the appointed date and prior to the enforcement of the Hill Sub Cadre Rules as Junior Engineer in the U.P. Jal Nigam and was promoted in the year 1998 to the post of Assistant Engineer, i.e. prior to the enforcement of the Hill Sub Cadre Rules.

By virtue of the Hill Sub Cadre Rules, the petitioner has been finally allocated to the State of Uttaranchal Pey Jal Nigam as Assistant Engineer.

The petitioner was substantively appointed and was holding the post of Assistant Engineer vide order dated 24-10-1998 and after enforcement of Hill Sub Cadre Rules by the erstwhile State of U.P., he has become member of U.P. Jal Nigam. Subsequently, after bifurcation of State of Uttaranchal from the State of U.P., after the appointed date, the petitioner became member of Uttaranchal Pey Jal Nigam in the promotional post of Assistant Engineer held by him in the same pay-scale, therefore, the order of the Chief Engineer (Headquarter) suffers from non-application of mind and the same cannot be sustained.

Even otherwise also, from a perusal of the order impugned, it does not appear that an opportunity of hearing had been given to the petitioner as he was appointed substantively as Junior Engineer and he was promoted to the post of Assistant Engineer. Further, a perusal of the impugned order shows that the reversion of the petitioner on the facts fabricated by the Department, for which an opportunity of hearing must have been given to the petitioner before the impugned order could have been passed. Thus, the order dated 29-8-2005 passed by the Chief Engineer (Head Quarter)-respondent no.3 is violative of principle of natural justice and the procedure laid down in the U.P. Government Servant (Discipline And Appeal) Rules, 1999, which had been adopted by the Department concerned, as is admitted to the learned counsel.

In the result, the writ petition succeeds.

The Writ Petition is allowed and the order dated 29-8-2005 passed by the Chief Engineer (Head Quarter)-respondent no.3 is hereby set aside.

(B.S.Verma, J.) **(P.C.Verma, J.)**

RCP